

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LEE ANDERSON,)	Civ. 05-4005-KES
)	
Petitioner,)	
)	
vs.)	ORDER
)	
DOUGLAS WEBER, Warden, South)	
Dakota State Penitentiary,)	
)	
Respondent.)	

Petitioner filed an application for federal habeas corpus pursuant to 28 U.S.C. § 2254 on January 12, 2005. On January 25, 2005, this court entered an order requiring the Attorney General of the State of South Dakota to file an answer or responsive pleading within 30 days following the date of service by mail and referred this matter to Magistrate Judge Marshall P. Young for findings and recommendations. Respondent moved to dismiss petitioner's habeas petition on February 11, 2005. On March 3, 2005, Magistrate Judge Young recommended that the complaint be dismissed on the basis that petitioner did not receive permission from the Eighth Circuit Court of Appeals to file a successive writ. On March 17, 2005, petitioner objected to Magistrate Judge Young's findings and recommendation to dismiss the case.

This court must make a de novo review "of those portions of the [Magistrate's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); see also Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

DISCUSSION

The court has reviewed petitioner's objections to Magistrate Judge Young's findings and recommendations. This is petitioner's second successive habeas petition. It raises essentially the same issues that were raised in his first petition (Civ. 01-4173). He did not obtain leave to proceed from the Eighth Circuit Court of Appeals as is required by 28 U.S.C. § 2244(b)(3)(A). As a result, this court is without jurisdiction to consider petitioner's request for relief. Williams v. Hopkins, 130 F.3d 333, 335-36 (8th Cir. 1997); Garrett v. Groose, 99 F.3d 283, 285-86 (8th Cir. 1996). The court affirms the magistrate judge's recommendations and findings. Finding that petitioner filed a successive petition, it is hereby

ORDERED that petitioner's objections to the magistrate judge's findings and recommendations (Docket 17) are overruled and the findings and recommendations are adopted.

IT IS FURTHER ORDERED that petitioner's application for writ of habeas corpus (Docket 1) is dismissed without prejudice.

Dated May 17, 2005.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE